IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1274 of 1996

Sou.Chandrabhagabai Hindurao
Redekar and Ors. ... Petitioners

V/s

Hindurao Shankar Redekar and Ors..Respondents

Shri Pratap Bhosale i/b A.A.Kumbhakoni for Petitioners
Shri P.R.Arjunwadkar for Respondent no.2

CORAM:S.R.SATHE,J.

DATED;20th Feb. 2006

P.C.:-

. Heard finally at the admission stage.

2. As the plaintiff's application for amendment to the plaint whereby he wanted to aver that sale deed executed by the defendant no.1 in favour of defendant no.2 on 30-6-1992 is void and not binding on the plaintiff, was rejected by the trial Court, he has filed the present petition under Article 227 of Constitution of India.

3. The original suit was for permanent injunction.

The trial Court was pleased to grant status quo. It appears that in spite of the said order the defendant no.1 sold the suit property to defendant no.2 during pendency of the said suit. Naturally, it became necessary for the plaintiff to amend the plaint and seek necessary declaration about the said sale deed.

4. The trial Court rejected the application for amendment on the ground that though the sale deed was executed on 30-6-1992 the application for amendment was filed in August 1995 and as such relief claimed by way of amendment is barred by law of limitation. However, affidavit filed in support of the application shows that the plaintiff got the knowledge about the said transaction on 7-11-1992. It is true that there was no specific mention about the said date in the application for amendment and as such the learned trial Judge held that contents of the affidavit are false and therefore rejected the application.

5. It is true that there is no specific averment in the application Exh.32 that plaintiff got knowledge about the said application on a particular date. Another important thing which has to be noted is that it is not the case that the affidavit was filed after the application was opposed by the defendant and he took the stand that such amendment could not be sought as it is barred by law of limitation. Admittedly, the defendant neither filed any Say to the application nor

adduced any evidence to controvert the statement of the plaintiff that he received knowledge about the sale deed on 7-11-1992. Besides this, when there was order passed by the court regarding status quo the plaintiff must be under impression that now nothing will go wrong and defendant would not take any steps. However, it seems that the learned trial Judge has not taken into consideration all these aspects and has therefore reached to a wrong conclusion. It is needless to say that subsequent event viz. sale of the suit property by defendant no.1 in favour of defendant no.2 during pendency of the suit has necessitated the amendment. Proposed amendment is in fact essential with a view to avoid multiplicity of proceedings and to determine the real controversy between the parties.

6. In view of above, the order passed by the learned trial Judge rejecting application for amendment is set aside. The applicant is allowed to carry out the amendment on payment of costs of Rs.1,000/- to the other side. The Respondent will be at liberty to file additional written statement in view of the amendment. Point of limitation with respect of amended clause is kept open. Plaintiff to carry out amendment in the plaint within two weeks from today.

7. Parties to act on the copy of the order duly authenticated by Sheristedar of this Court.

(S.R.SWATHE,J.)